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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,811	06/24/2003	David V. Boland	2442.001	1082

7590

03/29/2006

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EXAMINER

MAYES, DIONNE WALLS

ART UNIT

PAPER NUMBER

1731

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/602,811	Applicant(s) BOLAND, DAVID V.	
	Examiner Dionne Walls Mayes	Art Unit 1731	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

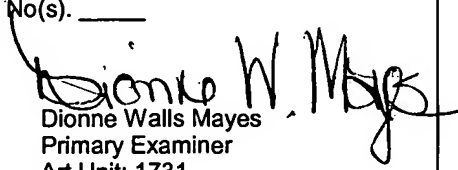
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: 11 and 12.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1,3-10 and 13-20.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.


 Dionne Walls Mayes
 Primary Examiner
 Art Unit: 1731

Continuation of 3. NOTE: Applicant has amended claim 13 in such a manner that would require further consideration and/or search.

Continuation of 11. does NOT place the application in condition for allowance because: The Examiner does not find Applicant's arguments persuasive. First, in response to Applicant's contention that the finality of the Office Action dated 1/5/2006 should be withdrawn, the Examiner wishes to point out that she was well within her rights to issue a "Final Rejection" because Applicant changed the scope of claim 1, (by eliminating the last limitation) notwithstanding the incorporation of allowable subject matter of claim 2. This amendment broadened the scope of claim 1 and resulted in a new claim requiring further consideration and search. Because of that reason, in addition to the fact that Applicant presented new claims 13-20, the "Final Rejection" is considered to be proper, even despite the fact that the previous Action was by written a different Examiner. Second, in response to Applicant's contention that one skilled in the art, designing a container for discarded smoking materials, would not find motivation or a suggestion in the prior art to combine the LaFleur and Garland references to arrive at Applicant's invention as claimed. The Examiner disagrees. Applicant asserts that there is no suggestion in LaFleur to pull the bag against an interior portion of the container by means of an air eliminator to increase flame resistance or retard flammability or burning, but Applicant has not included such recitation in the claims at issue - it is just merely mentioned in the instant specification. Further, the Examiner finds no indication that LaFleur fails to disclose eliminating air between the bag and the container. To the contrary, the LaFleur reference teaches exactly that (see col. 1, lines 58-59). Third, Applicant asserts that the Action fails to show how the cited references meet the requirements of the claims, but the Examiner believes that this is clear from the references, namely the figures. Despite Applicant arguments, the Examiner maintains that the Final Rejection filed on 1/5/2006 is proper and is maintained..